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Book Review. Constitutional Developments in India by C.H. Alexandrowicz and Public Law Problems in India edited by L.F. Ebb

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the authors' comments. It discusses at length many of the legal issues raised by the action of Governor Faubus of Arkansas in ordering the National Guard to prevent by force the carrying out of the federal-court order relating to the plan of desegregation for the Little Rock public schools.

With fast-moving developments each month in this area of constitutional law, this or any other book on the subject will virtually require "advance sheets" if it is to reflect the existing state of the law.

HERBERT BROWNELL, JR.*

CONSTITUTIONAL DEVELOPMENTS IN INDIA. By Charles H. Alexandrowicz.¹ Bombay: Oxford University Press. 1957. Pp. viii, 255. \$3.15.

PUBLIC LAW PROBLEMS IN INDIA. A Survey Report. Proceedings of a Conference. Edited by Lawrence F. Ebb.² Stanford: School of Law, Stanford University. 1957. Pp. xi, 194. \$2.50.

The study of Indian public law is necessarily comparative.³ Such a study should interest students of American public law, for the struggle with basic problems is a common effort, and the study of Indian solutions must provide some stimulus to American thought. But, as Professor Ebb concedes, the value of this comparative study is limited by the obvious differences in the social contexts; legal institutions transplanted from one social landscape to the other are unlikely to flourish.

Professor Alexandrowicz directs the beginner to these differences in context in his opening discussion of the Indian interpretive method and approach to constitutional problems. He points out that the Indian constitution draws upon both English and American experience and is, in a sense, a compromise between the two traditions. The English tradition has colored the Indian courts' view of themselves: They regard their role in the constitutional scheme as more modest than that of American courts.⁴ This is reflected in a constitutional method which resembles more the literal method of English statutory construction. It is also reflected in a more starched use of precedent in Indian constitutional cases. Although the Supreme Court of India has overruled one constitutional decision,⁵ overruling decisions is regarded for the

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³ Dr. Ambedkar, India's first Attorney General, observed in the Constituent Assembly:

The only new things, if there be any, in a constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country.

I BASU, COMMENTARY ON THE CONSTITUTION OF INDIA x (3d ed. 1955).

⁴ The Indian presidency is another example of compromise: The office is clothed with powers similar to those provided our President, but no occupant of the office has exercised these powers except at the direction of the Prime Minister. The function of the office, thus, more resembles that of the English Crown.

⁵ Bengal Immunity Co. v. State of Bihar, [1955] S.C.J. 672, (India), *overruling*, State of Bombay v. United Motors, Ltd., [1953] S.C.J. 373 (India).

most part as a function of the simplified amending process⁶ which has in fact been used to overrule other constitutional decisions of the Supreme Court (p. 230) and which, in the English tradition, encourages a strict regard for stare decisis.⁷

Additional differences are demonstrated by a comparison of a leading Indian case, *In re Delhi Laws Act*, 1912,⁸ which Professor Alexandrowicz discusses at some length, with the recent decision of our own Supreme Court in *United States v. Sharpnack*.⁹ The Indian case is rather a series of advisory opinions on a question posed by the President as to the validity of three legislative acts. These acts authorized the executive to extend to certain provinces controlled by the central government such legislation as might at the time of the extension be in force in certain other Indian provinces. The executive was also authorized to restrict and modify the legislation so long as these executive revisions did not affect its policy, but only the mechanics of its application. The majority of the court upheld two of these acts, relying chiefly on an early decision of the Privy Council.¹⁰ Indian legislatures had for some years extended the power to assimilate legislation to local governors general and nothing in the Indian constitution condemned the practice. The third act, however, went further and authorized the executive to repeal or amend the legislation he had selected for extension. This provision was held invalid as an improper delegation of legislative power.

In an opinion reminiscent of the *Schechter* case,¹¹ Justice Mukherjea explained that the question of delegability must be resolved by a "proper interpretation of the terms of the Constitution itself," but with a view to the "essential principles underlying the process of law-making which our Constitution envisages."¹² He then read into the provision of the constitution vesting the legislative power in the Parliament the general rule of nondelegability of the "essential legislative function" of "declaring the legislative policy and laying down the standard which is to be enacted into a rule of law"¹³ and ruled then that "to repeal or abrogate an existing law is the exercise of an essential legislative power, and the policy behind such acts must be the policy of the legislature itself."¹⁴

One is not disposed to find fault with the Indian court for its ad-

⁶ See INDIA CONST. art. 368. This article provides for amendment by a two-thirds vote of members present in each House of Parliament (including at least a majority of the total House membership) except for federal provisions, which require also the approval of a majority of the state legislatures.

⁷ Cf. *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406-08 (1932) (Brandeis, J., dissenting). The posture chosen by the Indian courts is a striking analogue to the view of precedent in constitutional cases urged by those who have recently convicted our own Court of usurpation.

⁸ [1951] 2 Sup. Ct. Rep. 747 (India).

⁹ 355 U.S. 286 (1958).

¹⁰ *Queen v. Burah*, 3 App. Cas. 889 (P.C. 1878).

¹¹ *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1932).

¹² [1951] 2 Sup. Ct. Rep. at 970 (India).

¹³ *Id.* at 997.

¹⁴ *Id.* at 1009.

herence to a precedent which went unchallenged in the Constituent Assembly that drafted the long, well-considered constitution. Neither is one disposed to criticize the Indian court for the departure from literal-minded methodology evident in its recognition of the non-delegability rule. Surely it is true that the rule embodies an important desideratum of a democratic community—that important political decisions should be made by officials who are responsible to the electorate and who are held up to its view. And yet the application of this rule in the *Delhi Laws Act* case results in a distinction which is not purposive and which is unlikely to be of help to American courts despite its vitality in Indian law.¹⁵

Indeed, a mechanical application of the rule that a delegate can assimilate but not repeal would seem to require the invalidation of our Assimilated Crimes Act,¹⁶ upheld in the *Sharpnack* case. Under the provisions of that act, the state legislatures are situated as delegates and their amendments and abrogations are assimilated willy-nilly into the law of the federal enclave. Application of the Indian rule would permit Congress to assimilate the first act of its delegate, but not subsequent changes—no apparent purpose would be served by such a result.¹⁷

It is concluded that students who are aware of the perplexities and who are cautious of these differences which sometimes render Indian problems incomparable to our own may profitably begin a comparative study with either of these volumes. Though Professor Ebb's collection of essays is problem oriented and hence more provocative, Professor Alexandrowicz' book has the merit of continuity and is therefore more readable. There is very little duplication, so that the effort of reading both is not wasted.

PAUL D. CARRINGTON *

¹⁵ The Supreme Court of India has gone further, perhaps, in striking a partial assimilation on the ground that the power to delete parts of the assimilated legislation could not be delegated. See *Rajnarain v. Patna Administration Comm.*, [1954] Sup. Ct. Rep. 569 (India).

¹⁶ 18 U.S.C. § 13 (1952).

¹⁷ I do not mean to assert that the Indian court would necessarily apply their rule to such a case; there are, of course, important points of difference, particularly with respect to the character of the delegates.

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